

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

JOHN QUIGG
Respondent

Case No.: I-00-70342

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-70342) served September 18, 2001, the Government charged Respondent John Quigg with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that the violation occurred on September 17, 2001 at 1828 Columbia Road, N.W., and sought a fine of \$1,000.

Upon Respondent’s filing of an answer of Deny pursuant to D.C. Official Code § 2-1802.02(a)(3), an evidentiary hearing was held on January 4, 2002. Gerard Brown, the charging inspector in the case, appeared on behalf of the Government. Respondent John Quigg appeared on his own behalf. Isidoro Amaya, owner of the restaurant operating out of Respondent’s building located at 1828 Columbia Road, N.W., testified on behalf of Respondent. The

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

Government offered Petitioner's Exhibit ("PX") 100 into evidence, which was admitted without objection.

Based upon the testimony of the witnesses and my evaluation of their credibility, the admitted documentary evidence and the entire record of this case, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. At all relevant times, Respondent John Quigg owned the building located at 1828 Columbia Road, N.W. ("Property"). At all relevant times, Isidoro Amaya leased the Property for purposes of operating a restaurant.
2. At all relevant times, Mr. Amaya was the sole tenant of the Property. Pursuant to a leasing agreement between Respondent and Mr. Amaya, Mr. Amaya was responsible for maintaining the Property, including trash storage and collection.
3. On September 17, 2001, Mr. Brown inspected the area behind the Property, and observed a trash receptacle that was not covered and was overflowing with plastic bags filled with trash containing food items. PX 100. Mr. Brown also observed rats running from underneath the trash receptacle.
4. At the time of the alleged violation, Mr. Amaya had arranged for trash collection three times per week, and had contracted with Entech, Inc. for pest control services within his restaurant.
5. Respondent and Mr. Amaya have speculated that trespassers have illegally dumped trash in the trash receptacle behind the Property. At the time of the

alleged violation, the trash receptacle behind the Property was not locked or otherwise secured. Subsequent to the issuance of the Notice of Infraction, Mr. Amaya obtained a lock for the trash receptacle.

III. Conclusions of Law

1. By having plastic bags containing foodstuffs and other debris overflowing in its open trash receptacle, Respondent failed to store and containerize for collection solid wastes “in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard” on September 17, 2001 at 1828 Columbia Road, N.E. 21 DCMR 700.3. As a result, Respondent violated 21 DCMR 700.3 on September 17, 2001. *Accord DOH v. Danner*, OAH No. I-00-70193 at 3 (Final Order, January 31, 2002) (noting, “[t]he storage of wastes in open trash cans . . . violated [§ 700.3] because rats easily could obtain access to food items in the plastic bags.”).
2. Respondent has offered testimony that he and his tenant have an agreement whereby the tenant is responsible for the maintenance of the Property, including the storage and disposal of trash. Notwithstanding such an agreement, as well as Respondent’s tenant’s demonstrated efforts to abide by that agreement, the law holds property owners such as Respondent strictly liable for a violation of § 700.3. *See Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995). Moreover, Respondent’s speculation that persons may illegally dump trash in the trash receptacle behind the Property is unavailing, particularly in light of the evidence in the record that, at the time of the violation, the trash receptacle was left open and unsecured. *Accord DOH v. Parcel Five*

Associates, OAH No. I00-20400 at 4-5 (Final Order, May 23, 2002); *see also* *DOH v. Lin*, OAH No. I-00-70185 at 2-3 (Final Order, January 29, 2002).

3. The Rodent Control Act of 2000 authorizes a fine of \$1,000 for a first violation of § 700.3, and it will be imposed without reduction. *See* 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).²

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the amount of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 06/14/02

Mark D. Poindexter
Administrative Judge